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incorporator's handbook



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SCOPE AND PURPOSE OF THIS BOOKLET

Effective September 1, 1979, Bill 34, The Business Corporations Amendment Act, 1979 (S.O. 1979 C.36) transferred to the incorporator the responsibility for determining that the proposed corporate name and articles do not conflict with the statute.

The purpose of this booklet is to present guidelines for corporate name selection and the preparation and filing of articles of incorporation. Certain pertinent sections of the Regulations made under The Business Corporations Act are included in this booklet; however, the reader is referred to the Regulations and the Act to examine those sections not set forth. A copy of The Business Corporations Act including the Regulations may be purchased at the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario, M5S 1Z8.

This booklet contains general statements concerning the requirements of the Act and Regulations which are intended to serve only as a general guide and not as a substitute for the Statute when dealing with specific problems. Also, reference to this booklet should not be a substitute for consultation with a lawyer on legal matters or with an accountant on taxation and financing considerations.

With a view to fostering uniformity in the area of the selection of a corporate name, the contents of this booklet have been, to a large extent, adapted from a similar publication produced by the Corporations Branch, Consumer and Corporate Affairs Canada.

CONTENT OUTLINE

SECTION 1 CORPORATE NAME

PART 1 Aim of Corporate Name Regulations

1.1 Main Goals	3
1.2 "Distinctiveness"	3

PART 2 Selecting a Corporate Name

2.1 Weak Names	3
2.2 Ensuring Distinctiveness	3

PART 3 Name Decision Process

3.1 Overview	4
3.2 Name Search	4
3.3 Name Decision	4

PART 4 Elements of a Corporate Name & Degrees of Distinctiveness

4.1 Distinctive, Descriptive and Legal Elements ... 6	6
4.2 The Continuum of Distinctiveness	6

PART 5 Specific Regulations

5.1 Length of Name	8
5.2 Symbols in Name	8
5.3 Absolute Prohibitions	8
5.4 Qualified Prohibitions	8
5.5 Determining Confusion	9
5.6 Qualified Prohibitions	11
5.7 Obscenity	12
5.8 Distinctiveness	12
5.9 Misdescription	13
5.10 Amalgamation	13
5.11 Number Names	13
5.12 Coined Words	13
5.13 Languages Other Than English	13
5.14 Use of Foreign Terms Inside Ontario	13
5.15 Consents -- When Required	13

PART 6 Protection of Corporate Names

6.1 Protection by The Business Corporations Act and Regulations	14
6.2 Protection under The Trade Marks Act	14
6.3 Protection under Common Law	14
6.4 Forced Name Change	14
6.5 Some Case Law on Corporate Names	14

SECTION 2 PREPARATION AND FILING OF ARTICLES

PART 7 Incorporation As of Right & General Comments

15

PART 8 Completion of Articles General

16

PART 9 Filing of Articles

19
19

PART 10 Organization

20
20

PART 11 Appendices

21

SECTION 1 CORPORATE NAME

PART 1 - AIM OF CORPORATE NAME REGULATIONS

1.1 Main Goals

The overall goals of the corporate name law are:

- a) to minimize litigation with respect to similar business names by ensuring that NEW Ontario corporate names are not confused with EXISTING business names or trade marks; and
- b) to ensure, as far as is practical, that new Ontario corporate names do not MISLEAD or CONFUSE the public as to the nature or relationship of corporations.

1.2 "Distinctiveness"

Basically, new corporate names must be "distinctive"— and this distinctiveness must survive certain media distortion as the corporation identifies itself to the various publics with which it interacts - including other businesses, shareholders, creditors, consumers and government regulatory agencies.

PART 2 - SELECTING A CORPORATE NAME

2.1 Weak Names

The number of active business names and trade marks in Ontario is now so large that confusion among businesses and products could easily result if new names are not "distinctive". There is, therefore, little point in adopting a corporate name which contains terms that have become so overused that their distinctiveness is weakened.

2.2 Ensuring Distinctiveness

There are thousands of companies using weak terms, such as 'MAPLE LEAF', 'IMPERIAL', 'NATIONAL', 'UNITED', 'GENERAL', 'CANADIAN', 'ONTARIO', 'ASSOCIATED', and many others which you no doubt hear of frequently. These kinds of terms no longer contribute anything to distinguishing one name from another unless used in conjunction with a very distinctive term -- for example, a coined word such as EXXON, or one or more descriptive terms that render the whole name distinctive. A highly distinctive name has the best chance of remaining a memorable corporate label in a commercial world already full of many general and similar names. Appendix "A" of this brochure provides a listing of the most common terms used in existing names. In general, you should not rely on any of those terms either as the main element in making a proposed name distinctive or as terms which can be added to a proposed name to overcome confusion with an existing registered name.

Examples

The table in Part 4 of this booklet categorizes and gives examples of the range of weak and highly distinctive corporate names.

PART 3 - NAME DECISION PROCESS

3.1 Overview

In deciding whether the proposed name is available, several considerations may be made. These considerations and the name decision process are outlined in the flow chart on the next page.

Essentially, there are six main considerations:

1. Is the proposed name ABSOLUTELY PROHIBITED by the Regulations?
2. Is it QUALIFIEDLY PROHIBITED by the Regulations?
3. Is it OBSCENE?
4. Is it DISTINCTIVE?
5. Is it MISDESCRIPTIVE?
6. Is it CONFUSINGLY SIMILAR to an existing name or trade mark?

A more detailed description of each consideration is contained in Part 5 of this booklet under SPECIFIC REGULATIONS.

Note: Before determining if a proposed name is confusing you must make a name search (see 3.2).

3.2 Name Search

Once a proposed corporate name is selected, the incorporator must search the name against the existing names of other corporations, trade marks, trade names and unincorporated business enterprises.

A request for an Ontario biased or weighted search is to be submitted to one of the search houses (Appendix "B" contains a list of search houses currently in business) which will, using the NUANS system, search the proposed name against the name data base which contains all corporate names and trade marks in Canada. (The NUANS - New Upgraded Automated Name Search system and the name data base are the property of the Corporations Branch, Consumer and Corporate Affairs, Canada.) The search process will produce a computer printed Search Report listing names in a descending order of similarity. Using this Search Report you can decide whether or not the proposed name is deceptively similar to, or confusing with any name cited in the Search Report.

In addition, you should search the local telephone directory and trade indices (available in most public libraries) for any existing names that may conflict with the proposed corporate name.

3.3 Name Decision

You may avoid a number of potentially costly problems by a careful selection of a corporate name. Before making your decision as to whether to use the name, consider fully the name search report and the results of your searches of the local telephone directory and trade indices. As a rule of thumb - if in doubt do not use the name.

CORPORATE NAME DECISION PROCESS

CONSIDERATIONS

1. IS NAME ABSOLUTELY PROHIBITED BY REGULATIONS?

2. QUALIFIEDLY PROHIBITED?
Government sponsorship implied, etc.?

3. OBSCENE?

4. DISTINCTIVE?
(a) Too general?

(b) Only descriptive?

(c) Primarily or only a name or surname?

(d) Primarily or only a geographic name?

5. MISDESCRIPTIVE?

6. CONFUSING?
Check Name Search Report, Local Telephone Directory & Trade Indexes for Identical or Deceptively Similar Names

Confusing Aspects:

- (a) Distinctiveness
- (b) Length of time in use
- (c) Nature of goods or services or nature of business: including audience
- (d) Nature of trade
- (e) Degree of Similarity
 - appearance
 - sound
 - meaning
- (f) Geographic area of use

AUTHORITY REFERENCE IN B.C.A. REGULATION

Sections 11, 13, 14, 15
21

Sections 5, 7, 8, 9, 11,
14, 15, 16, 18

Section 13

Section 11 (a)
Section 11 (b)

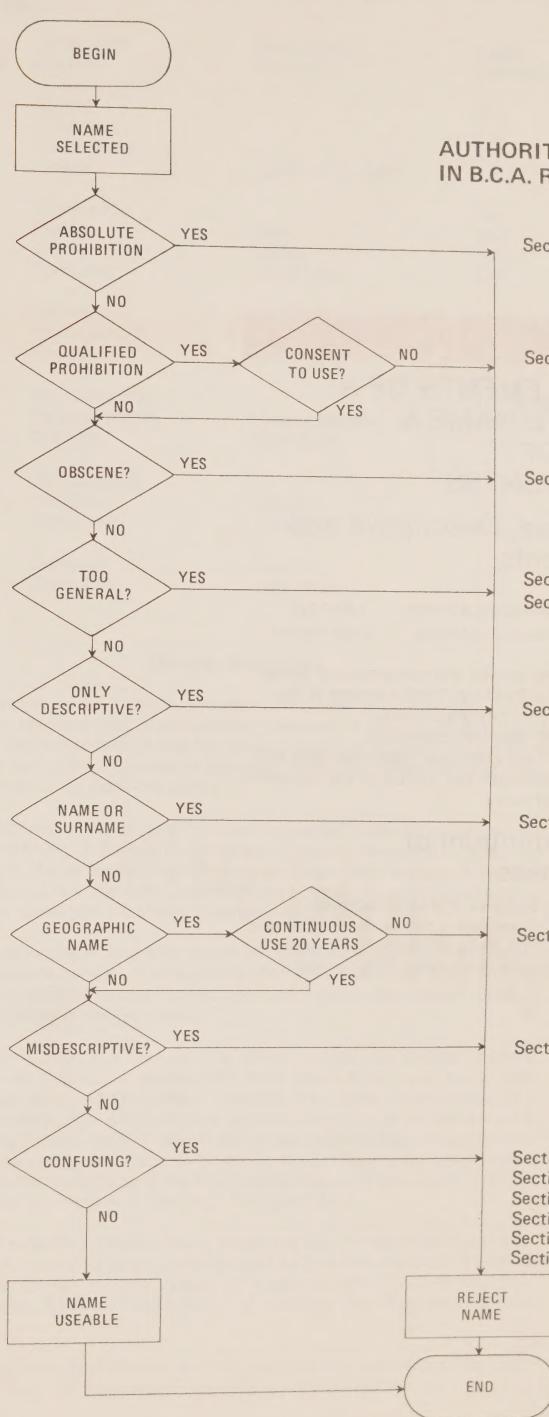
Section 11 (b)

Sections 11 (c)

Section 11 (d)

Section 17

Section 23 (a)
Section 23 (b)
Section 23 (c)
Section 23 (d)
Section 23 (e)
Section 23 (f)



PART 4 - ELEMENTS OF A CORPORATE NAME & DEGREES OF DISTINCTIVENESS

4.1 Distinctive, Descriptive and Legal Elements

TELFAX	COMMUNICATIONS	LIMITED
Distinctive Element	Descriptive Element	Legal Element

Nearly all corporate names are comprised of these three elements. The DISTINCTIVE element is the main identifier of the corporate name. The DESCRIPTIVE element describes the nature of the main company business, and the LEGAL element indicates the status of the company as an incorporated body.

4.2 The Continuum of Distinctiveness

There are varying degrees of distinctiveness in corporate names, some being highly distinctive and others very weak. The more distinctive the name is, the more memorable and commercially useful it is.

CORPORATE NAMES

Type of Name	Group	Distinctive Element	Descriptive Element	Legal Element
Coined, fanciful or suggestive name	I	Xerox Cominco Slack Shack Telfax	Communications	Ltd. Ltd. Ltd. Ltd.
Arbitrary use of dictionary words (free words)	II	Inspiration Husky Dome Rainbow	Oil Mines Oil & Gas	Inc. Ltd. Ltd. Ltd.
Family name	III	Moore Honeywell Molson	Industries	Corp. Ltd. Inc. Ltd.
Geographic name	IV	Hudson's Bay Falconbridge Toronto	Nickel Mines Elevators	Company Ltd. Ltd.
Descriptive name	V	Volkswagen Playboy Blindcraft	Clubs Products	Ltd. Inc. Ltd.
General name	VI	General Canadian	Motors Industries	Inc. Ltd.

Group	General Guidelines
I Coined, fanciful, suggestive name	Whether made up of a distinctive element alone or a combination of a distinctive element and a descriptive element, if the name has great inherent distinctiveness it will be given strong protection in law from confusion (of origin of goods or services or implied affiliation) and even from dilution of its distinctiveness.
II Arbitrary use of free word	If the dictionary word is used in a fanciful sense quite different from its ordinary meaning, the name is a borderline Class I name and is protected accordingly. If a dictionary word in a name is not used, in a fanciful sense, then because it is a free word available to all, it must be accompanied by a descriptive word that creates a distinctive phrase.
III Family name	Unless he is acting in bad faith to achieve confusion of goods or services or of businesses in order to ride on the coattails of an established firm, an individual is entitled to use his own name in a corporate name if he has a material interest in the business.
IV Geographic name	A geographic term is a free word to which no one can ordinarily claim exclusive use. Unless a geographic term used alone in a name has, through use, acquired secondary meaning, it must be accompanied by a descriptive term. But where the geographic location is not famous, if a name using the geographic name alone has become famous and therefore has acquired great distinctiveness as denominating the corporation or its products through long (twenty years) and continuous use, it will be given strong protection in law (e.g., Falconbridge).
V Descriptive name	A descriptive term is by definition a free word used to describe a business; therefore, it must always be accompanied by another descriptive term. If it connotes an origin or a nature of business that is not in fact true (for example, Eskimo Handicrafts) it violates the Regulations (see Part 3.4).
VI General name	A name that is so general that it could apply to any products or services anywhere must not be used as it is totally non-distinctive.

PART 5 - SPECIFIC REGULATIONS & RELATED CONSIDERATIONS

Note: None of the following applies to an existing corporation under The Business Corporations Act unless the corporation proposes to change its name.

5.1 Length of Name

...The Regulations

s.21...The name of a corporation, including punctuation marks and spaces, shall not exceed 120 characters in length.

5.2 Symbols in Name

...The Regulations

s.20...For the purposes of subsection 3 of section 8 of the Act, the following punctuation marks and other marks are the only ones permitted as part of the name of a corporation:

! " # \$ % & ' () * + , - . / : ; < = > ? [] \ ^ .

5.3 Absolute Prohibitions

...The Regulations

s.5...A proposed name under section 3 or 4 shall not be identical to that of the other body corporate, unless the body corporate is incorporated under the laws of a jurisdiction outside Canada, and has never carried on any activities or identified itself in Canada.

s.15...The following words and expressions shall not be used in a corporate name

2. "association";

5. "condominium" or any derivation thereof;

6. "cooperative" or any abbreviation or derivation thereof;

7. digits or words which would lead to the inference that the name is a number name;

12. any word or expression that would lead to the inference that the corporation is not a business corporation to which the Act applies.

5.4 Qualified Prohibitions

...The Regulations

s.3(1)...A corporation may have a name similar to that of another body corporate where the corporation is not or will not be affiliated with the body corporate if,

- (a) that corporate name relates to a proposed corporation that is the successor to the business of the body corporate and the body corporate has ceased or will cease to carry on business;
- (b) the body corporate undertakes in writing to dissolve forthwith or to change its name before the corporation proposing to use the name commences to carry on business; and

(c) subject to subsection 2, the corporate name sets out in numerals the year of acquisition of the name in parenthesis immediately before the word "limited", "incorporated", "corporation", or the corresponding abbreviation thereof.

s.8...Where a body corporate has not carried on business in the immediately preceding two years, a proposed name that would otherwise be prohibited under clause b of subsection 1 of section 7 of the Act because of the name of the body corporate is permitted if,

- (a) the body corporate consents in writing to the proposed name; and

(b) the body corporate undertakes in writing to dissolve forthwith or to change its name to some dissimilar name before the corporation proposing to use the name commences to use it.

s.9...A corporate name shall not contain a word that is the same or similar to the distinctive element of an existing trade mark or name other than the name of an individual, but the word shall not for that reason alone be prohibited if,

- (a) the person who has the trade mark or the name consents in writing to the use of the corporate name; and

- (b) the use of the corporate name would not be likely to deceive.

s.12(1)...A corporate name shall not contain a word or expression, an element of which is the family name of an individual whether or not preceded by his given name or initials, unless the individual, his heir, executor, administrator, assigns or guardian consents in writing to the use of his name and the individual has had or will have a material interest in the corporation.

s.12(2)...Subsection 1 does not apply where the corporation that will use the proposed name is the successor or affiliate of a body corporate that has, as an element of its name, the family name, provided that,

- (a) such body corporate consents in writing to the use of the name; and
- (b) if the proposed name would contravene clause b of subsection 1 of section 7 of the Act, such body corporate undertakes in writing to dissolve forthwith or change its name to some name that complies with clause b of subsection 1 of section 7 of the Act before the corporation proposing to use the name commences to use it.

s.14...No word, expression, or abbreviation thereof, the use of which is prohibited or restricted under an Act or regulation of the Parliament of Canada or a province or territory of Canada, unless such restriction is satisfied, shall be used in a corporate name.

s.15...The following words and expressions shall not be used in a corporate name:

1. "Amalgamated", unless the corporation is an amalgamated corporation resulting from the amalgamation of two or more corporations.
3. "Club", unless the corporation carries on a sporting or athletic business and there is no inference that a member of the public may become a member of a corporation.
4. "College", "institute" or "university" if the word would lead to the inference that the corporation is a university, college of applied arts and technology or other post-secondary institution.
8. "Engineer" or "engineering" or any variation thereof, except with the consent in writing of the Association of Professional Engineers of the Province of Ontario.

9. "Housing" unless the corporation is sponsored by or connected with the Government of Canada or the Government of Ontario.

10. "Veteran" or any abbreviation or derivation thereof, unless there has been a continuous use of the name for a period of at least twenty years prior to the acquisition of the name.

11. Numerals indicating the year of incorporation, unless clause c of subsection 1 of section 3 applies, or it is a year of amalgamation of the corporation.

5.5 Determining Confusion

...The Regulations

s.2(1)...For the purposes of clause b of subsection 1 of section 7 of the Act and the Regulations, the meaning of the expression "if the use of that name would be likely to deceive" shall include,

(a) a name that would lead to the inference that the business or activities carried on or intended to be carried on by the corporation under the name, and the business or activities carried on by any other person, are one business or one activity, whether or not the nature of the business or activity of each is generally the same;

(b) a name that would lead to the inference that the corporation bearing the name or proposed name is, or would be, associated or affiliated with a person, the corporation and such person are not, or will not be, associated or affiliated; or

(c) a name whose similarity to a person would lead to the inference that the name would cause someone who had an interest in dealing, or reason to deal, with the person, to deal with the corporation bearing the name in the belief that he was dealing with the person.

s.3(1)...A corporation may have a name similar to that of another body corporate where the corporation is not or will not be affiliated with the body corporate if,

(a) that corporate name relates to a proposed corporation that is the successor to the business of the body corporate and the body corporate has ceased or will cease to carry on business;

(b) the body corporate undertakes in writing to dissolve forthwith or to change its name before the corporation proposing to use the name commences to carry on business; and

(c) subject to subsection 2, the corporate name sets out in numerals the year of acquisition of the name in parenthesis immediately before the word "limited", "incorporated", "corporation", or the corresponding abbreviation thereof.

s.4...A corporation may have a name similar to that of another body corporate where the corporation is affiliated with that body corporate.

s.5...A proposed name under section 3 or 4 shall not be the same as that of the other body corporate, unless the body corporate is incorporated under the laws of a jurisdiction outside Canada, and has never carried on any activities or identified itself in Canada.

s.16(1)...No word or expression that suggests that a corporation,

(a) is connected with the Crown or the Government of Canada, or the government of a municipality or any province or territory of Canada, or any department, Ministry, branch, bureau, service, board, agency, commission, or activity of any such government or municipality;

(b) is sponsored or controlled by, or is associated or affiliated with a university or an association of accountants, architects, engineers, lawyers, physicians, surgeons or any professional association recognized by the laws of Canada or a province of territory of Canada; or

(c) carries on the business of a bank, loan company, insurance company, trust company, other financial intermediary or a stock exchange that is regulated by a law of Canada or a province of territory of Canada, shall be used in a corporate name without the consent in writing of the appropriate authority, university or professional association, as the case may be.

s.16(2)...No word or expression that suggests that a corporation is connected with a political party or leader of a political party, where the objects for which the corporation is to be incorporated are of a political nature, shall be used in a corporate name.

Overcoming Confusion with an Existing Name

...Related Considerations

a) Often a proposed name may contain a distinctive element already in use that is not HIGHLY distinctive and have, in addition, a descriptive term to distinguish a different line of business. Thus, "MAPLE LEAF MINING CO. LTD." would not be confusing with "MAPLE LEAF CONSTRUCTION LTD.".

b) However, where corporations would be likely to be in a similar line of business within the same geographical area, confusion cannot be overcome simply by adding very general terms or terms that have become weak through overuse. Therefore, a name like "UNION TELECOMMUNICATIONS LTD." would be confusing with "THE UNION INTERNATIONAL COMMUNICATIONS LTD.".

c) Affiliated corporations may use the names of cities, city districts or even shopping centres, with or without parenthesis, to distinguish between their corporations even if they are in a similar line of business. For example, "CORTINA SKI BOUTIQUES (TORONTO) LTD." would not be confusing with "CORTINA SKI BOUTIQUES (WINDSOR) LTD.".

Implied Relationship Between Corporations

...The Regulations

s.4...A corporation may have a name similar to that of another body corporate where the corporation is affiliated with that body corporate.

...Related Considerations

If a proposed name of an affiliated corporation contains a well-known or highly distinctive element of an existing name, then the consent must be given in writing, e.g., "KODAK OF CANADA LTD." and "KODAK BICYCLES LTD.". The proposed name contravenes the Regulations IF IT FALSELY IMPLIES A RELATIONSHIP BETWEEN TWO BUSINESSES since that could confuse the public by implying that one corporation has access to the resources of the other.

Similarity Between Foreign Parent Corporations and Affiliates

...The Regulations

s.5...A proposed name under section 3 or 4 shall not be the same as that of the other body corporate, unless the body corporate is incorporated under the laws of a jurisdiction outside Canada, and has never carried on any activities or identified itself in Canada.

...Related Considerations

Greater similarity is permitted here. For example, a general term such as "Canada"; "Ontario"; "of Canada"; "Canadian", etc. can be used to distinguish the name of an Ontario Corporation from its foreign parent. Foreign corporations and their affiliates are not required to signify their foreign-owned, or -controlled status by adding "Canada", "Ontario", etc.

Conflicting Trade Marks and Corporate Names

a) If a proposed corporate name is confusing with a trade mark for similar wares or services the name must not be used unless the incorporator
i) is the owner of the trade mark, or

ii) has the written consent of the trade mark owner and the use of the trade mark in the corporate name would not FALSELY imply a relationship between the corporation and the goods or services associates with the trade mark.

However, if the wares or services of the trade mark and the proposed line of business of the corporation are sufficiently dissimilar, and if the trade mark is not highly distinctive or well known, then the proposed name is not confusing with the trade mark.

5.6 Qualified Prohibitions

...Related Considerations Successor Corporations

a) The incorporation of an existing unincorporated business does not constitute a "successor" situation.

b) Section 7(e) of the Regulations, which refers to successor CORPORATIONS, also applies to UNINCORPORATED businesses.

Given Names and Surnames

a) When a proposed corporate name has, as its distinctive feature, a word which is both a surname and a dictionary word, e.g. "Black Manufacturing Ltd.", the individual's consent and undertaking to have a substantial interest in the company is NOT required.

b) A proposed corporate name which has as its distinctive feature, a given name, or a given name and initial(s), e.g. "Pierre's Coiffures Inc.", does NOT require a consent and undertaking to have a substantial interest in the company by the person named.

5.7 Obscenity

...The Regulations

s.13...No word, expression, or abbreviation thereof, the use of which is prohibited or restricted under an Act or regulation of the Parliament of Canada or a province or territory of Canada, unless such restriction is satisfied, shall be used in a corporate name.

...Related Considerations

Even highly imaginative names such as "Booby Trap Ltd." for brassiere manufacturers or "The Little Brick Shirt House" for shirt retailers might be objectionable particularly if the name contains or connotes any scatological term.

5.8 Distinctiveness

Consideration of Whole Name

Generally when deciding whether a corporate name is distinctive, the name should be considered as a whole, and not only its separate elements.

...The Regulations

s.11...A corporate name shall not be,

(a) too general;

(b) only descriptive, in any language, of the quality, function or other characteristic of the goods or services in which the corporation deals or intends to deal;

(c) primarily or only the name or surname used alone of an individual who is living or has died within thirty years preceding the date of filing the articles;

(d) primarily or only a geographic name used alone, unless the proposed corporate name has been in continuous use for a period of at least twenty years prior to the date of filing the articles; or

(e) primarily or only a combination of punctuation marks or other marks that are permitted under section 20.

Given Names and Surnames

...Related Considerations

Two surnames, e.g. "BLACK AND LEBLANC LTD" produce a highly distinctive form of a corporate name and may be used without a descriptive element.

s.7...A corporation may have a name similar to that of a known,

(a) trust;

(b) association;

(c) partnership; or

(d) sole proprietorship,
or a known name under which any of them carry on business or identify themselves if,

(e) the corporate name relates to a corporation that is the successor to the business carried on under the name and the user of the name has ceased or will cease to carry on business under the name; or

(f) the known trust, association, partnership or sole proprietor undertakes in writing to dissolve forthwith or to change its name before the corporation proposing to use the name commences to use it.
s.23...For the purpose of section II of the Act, the matters the Minister may consider when determining whether a name is contrary to section 7 include,

(a) the distinctiveness of the whole or any elements of any name or trade mark and the extent to which the trade mark has become known;

(b) the length of time the trade mark or name has been in use;

(c) the nature of the goods or services associated with the trade mark or the nature of the business carried on under or associated with a name, including the likelihood of any competition among businesses using a trade mark or name;

(d) the nature of the trade with which a trade mark or name is associated, including the nature of the products or services and the means by which they are offered or distributed;

(e) the degree of similarity between the corporate name and any trade mark or name in appearance or sound or in the ideas suggested by them; and

(f) the geographic area in Ontario in which the corporate name is likely to be used.

5.9 Misdescription

...The Regulations

s.17...No word or expression that misdescribes, in any language,

- (a) the business, goods or services in association with which the corporate name is proposed to be used;
- (b) the conditions under which goods or services will be produced or supplied or the persons to be employed in the production or supply of these goods or services; or
- (c) the place or origin of the goods or services produced or supplied by the corporation, shall be used in a corporate name.

5.10 Amalgamations

...The Regulations

s.10...Where two or more corporations amalgamate, the name of the amalgamated corporation may be the same as the name of one of the amalgamating corporations.

5.11 Number Names

...The Act

s.6(2)...Where no name is specified in the articles which are delivered to the Minister, the corporation shall be assigned a number name.

s.18(b)...“Number name” means the name of a corporation which consists only of its corporation number followed by the word “Ontario” and one of the words or abbreviation provided for in subsection 1 of section 8.

...The Regulations

s.15...The following words and expressions shall not be used in a corporate name:

7. Digits or words which would lead to the inference that the name is a number name.

Permitted Numbers & “Ontario” Required

...Related Considerations

a) A corporate name may contain only numeric characters subject to the following conditions:

- i) The numeric characters will be assigned consecutively by Companies Services Branch of the Ministry;

ii) In addition to the numeric characters, the word “Ontario” must be included to ensure that there is a distinction between corporations incorporated in different jurisdictions having numeric names.

b) A subsequent request for a change of name from numeric to alphabetical characters will require Articles of Amendment including the prescribed fee.

5.12 Coined Words

a) A coined word in a corporate name that has no meaning is obviously acceptable and usually gives the name a strong distinctive element, e.g. Kodak Ltd.

b) A coined word that is formed from the combination of two or more words is also acceptable as a corporate name and usually provides a strong distinctive element, e.g. Techniglas Ltd.

5.13 Languages Other Than English

...The Act

s.8(3)...Only letters from the alphabet of the English language or Arabic numerals or a combination thereof, together with such punctuation marks and other marks as are permitted by regulation, may form part of the name of a corporation.

5.14 Use of Foreign Terms Inside Ontario

...Related Considerations

In Ontario, the use of a foreign term in a corporate name is allowed. However, the legal element (Ltd., Corporation, Incorporated) must be in the English language.

5.15 Consents -- When Required

...The Regulations

See Regulations s.3(1)(b), 7(f), 8, 9, 12, 16 in Parts 5.4, 5.5 and 5.8 of this brochure. These are the instances in which consents are required.

There is no printed form for the consent or consent and undertaking but these documents must be in the form prescribed by section 36 of the Regulations

PART 6 - PROTECTION OF CORPORATE NAMES

6.1 Protection by The Business Corporations Act and Regulations

ANY business name (incorporated or not*) receives protection under The Business Corporations Act and the Regulations against the use of your name by another corporation.

Naturally, highly distinctive names will receive greater protection than the weaker names (see Part 2 for a description of distinctive and weak names). If another corporation is using a CORPORATE NAME that is deceptively similar to your business name (incorporated or not) you can file an objection with the Companies Division.

6.2 Protection under The Trade Marks Act

If someone else attempts to obtain a TRADE MARK for the distinctive element of your corporate name you can oppose the use of it in accordance with section 37 of The Trade Marks Act. (Incidentally, it is good safety precaution under present law to register as a trade mark the distinctive element of your business name if you plan to use it as such on products or for services, etc.)

6.3 Protection under Common Law

As a last resort, you can always rely on the common law protection of your business name. If someone else is using a business name (incorporated or not) confusingly similar to your business name—and you were the first user—you can bring a "passing off" action against the other business.

***NOTE:** Sole proprietorships and partnerships must register with the Registrar of Partnerships using Form No. CD-375. A corporation using a name other than its corporate name must register such name with the Registrar of Partnerships using Form No. CD-444. Forms may be obtained from
Registrar of Partnerships
Companies Services Branch
Ministry of Consumer and Commercial Relations
555 Yonge Street
Toronto, Ontario
M7A 2H6

6.4 Forced Name Change

If you chose a corporate name that offends the Act or the Regulations, a hearing may be held by the Minister which may result in a forced change of corporate name. This can be costly as it may affect the established good will, require new signs, stationery, etc.

6.5 Some Case Law On Corporate Names:

- Canadian Motorways Ltd. v. Laidlaw Motorways Ltd.**, (1974) S.C.R. 675, 40 D.L.R. (3d)52.
- Re C C Chemicals Ltd.**, (1967) 2 O.R. 248, 63 D.L.R. (2d) 203.
- Re Ebsco Investments Ltd. and Ebsco Subscription Services Ltd.** (1975), 7 O.R. (2d) 741, 56 D.L.R. (3d) 501.
- Re Cantrade Sales and Import Co. Ltd.** (1977), 15 O.R. (2d) 562.
- Re Compro Ltd. and Combined Engineered Products Ltd. et al** (1974), 2 O.R. (2d) 671.
- C.A. Fitzsimmons & Co. Ltd. v. A. H. Fitzsimmons & Co. Ltd.** (1975), 20 C.P.R. (2d) 285.
- Re Fordprint Ltd. and Minister of Consumer & Commercial Relations et al** (1976), 11 O.R. (2d) 434, 28 C.P.R. (2d) 262.
- Re F. P. Chapple Co. Ltd.** (1960) O.R. 531.

SECTION 2 PREPARATION AND FILING OF ARTICLES

PART 7- INCORPORATION AS OF RIGHT & GENERAL COMMENTS

Incorporation under The Business Corporations Act is, subject to certain conditions, as of right on filing articles in the prescribed form that conform to the Act.

However, where the practice of a profession is governed by an Act, a corporation may be incorporated to practice the profession only if such Act expressly permits the practice of such profession by a corporation (section 3(3) of the Act).

Where the proposed corporation is to carry on business which requires registration or licencing (for example, registration/licencing under The Real Estate and Business Brokers Act, The Insurance Act or any other Act), the incorporator should clear the proposed name and objects of the corporation with the appropriate Registrar or Licencing Officer **prior** to the delivery of articles to the Companies Services Branch. Failure to obtain such clearances may result in inconvenience and additional expense in having to file subsequent Articles of Amendment to amend the name or objects which are found to be unacceptable by another government agency or regulatory body.

It is well to remember that while the incorporation is as of right, it **does not** necessarily mean that a corporation once incorporated may carry on all business activities as of right. Where a certain business is regulated by a federal or an Ontario statute or a municipal by-law, a corporation must meet the applicable regulatory requirements, including licencing by or registration with the appropriate authority.

A booklet, "Starting a Small Business", which may be obtained free of charge from any office of the Consumer and Commercial Relations Ministry, lists names and addresses of some government agencies that you may have to contact.

The Ontario Ministry of Industry and Tourism provides consulting assistance and information to persons starting a business. See Appendix "C" for the office nearest to you.

It is recommended that you obtain a copy of The Business Corporations Act which governs all corporate transactions of a business corporation and a copy of The Corporations Information Act, 1976 which regulates certain disclosure/reporting requirements for corporations; these publications may be purchased for \$3 and 50 cents (subject to change) respectively at the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario M5S 1Z8; telephone: (416) 965-2054. Useful information for drafting objects, authorized capital, etc., may be found in such reference books as the Ontario Corporation Manual and the Ontario Corporation Law Guide which are private publications and are available in the reference department of most public libraries.

PART 8 - COMPLETION OF ARTICLES

General

Articles must be in the form prescribed by the Regulations and the first page must always be on the form supplied by the Ministry. Detailed instructions for completion accompany each set of articles and those instructions are not repeated in this booklet. The information in this booklet is more general and is intended to clarify and supplement the instructions that are supplied with the forms for articles.

Article 1.

You should review the NUANS name search report, following the guidelines set out in Section 1 of this booklet, to ensure that the selected corporate name does not offend the Act and the Regulations.

Article 2.

Often when a small business is being incorporated the question arises as to what address to set out, as no premises may have been rented prior to incorporation. The Act (section 161) provides that certain books of account and records are to be kept at the head office. Some incorporators use their home for this purpose and accordingly that address is set out in this article. The head office must be located in Ontario.

Article 3.

A corporation **not** offering its securities to the public may have only one director. However, a corporation offering its securities to the public is required to have no less than three directors (section 122(2) of the Act.).

Article 4.

A majority of directors must be resident Canadians (section 122(3) of the Act). "Resident Canadian" means an individual who is a Canadian citizen or has been lawfully admitted to Canada for permanent residence and who is ordinarily resident in Canada (section 1(1)23a of the Act).

Article 5.

The objects of the corporation must be set out. The objects are the aims of the corporation. It is advisable to keep the objects broad in nature since a general object will include the particulars normally included in that sort of business. For example, imagine the complexity of activities carried on in a large retail store. Such an object clause would go on for pages. However, many merchandising corporations have the following object clause:

"To manufacture, buy, sell, import, export, and otherwise deal in and with goods, wares and merchandise of all kinds".

Incidental and ancillary to the objects of the corporation, set out in Article 5 are the extensive powers granted to all corporations by The Business Corporations Act under section 15, which gives the corporation most of the additional powers that generally are required.

The danger of drafting with great particularity is that in listing all the particulars of the corporation's activities, if one is left out, it might be said that it was left out intentionally and, therefore, limit the powers of the corporation accordingly.

Article 6.

You should consider:

- If there is to be only one class of shares, the class must be common. Common shares are always voting and fully participating, that is, a common shareholder shares in the remaining assets of the corporation upon its dissolution, subject to the rights of the creditors and senior shareholders, if there are any.
- If there is more than one class of shares, one class must be common and the others special. Special shares are shares to which special conditions, rights, restrictions, limitations or prohibitions may be attached. For example, they may be non-voting or entitled to a fixed preferential dividend, or they may be redeemable.

- There is considerable flexibility in drawing up the conditions attaching to special shares and attention must be made to the needs of the particular corporation, its shareholders and investors. We suggest you consult your lawyer if it is your intention to include special shares in the authorized capital of the corporation.

The following is an example of share capital clause:

Example - The authorized capital is 10,000 common shares.

This clause would enable the corporation to issue up to 10,000 common shares at whatever amount per share the directors of the corporation consider to be in the best interests of the corporation.

Article 7.

Where a corporation is to have special shares you may wish them to have certain preferences or limitations. Among such provisions may be the right to a preferential dividend or the right to convert one class of special shares into shares of another class. These and other provisions may be used for estate planning, financing or other special purposes. You should seek legal advice to determine what, if any, conditions would be useful in your particular circumstances.

Article 8.

As you will note, this article is headed "the restrictions, if any, on the allotment, issue or transfer of shares...". This is an important consideration for corporations which have only a handful of shareholders. Sometimes it is important to control the entry of new shareholders, and also to give preference of the existing shareholders, to increase their interest in the corporation.

There are two common methods of achieving the above. First, by allowing a transfer of the shares only with the consent of the Board of Directors, or only with the consent of the Board of Directors and the consent of the shareholders, or secondly, by not allowing a transfer unless the shares are first offered to the existing shareholders.

Example - No shares shall be transferred without the express consent of the majority of the directors, to be signified by a resolution passed by the Board. Your lawyer should be consulted to advise on the adequacy of such a clause.

Article 9.

The following are some common special provisions.

Example - The number of shareholders of the corporation, exclusive of persons who, having been formally in the employment of the corporation, or while in that employment, and have continued after the termination of that employment, to be shareholders of the corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares, being counted as one shareholder, and that any invitation to the public to subscribe for its securities is prohibited.

This together with restriction on transfer of shares is the definition of a "private company" as found in The Securities Act. It is often included in the articles of the corporation since it then becomes a matter of public record that the corporation will not be offering its securities to the public. You will note that the corporation is prohibited from soliciting members of the public to buy its shares.

Another special provision permits a corporation to use its name in any language. Under The Business Corporations Act the words corporation, incorporated, or limited, or the corresponding abbreviations thereof, must be the last word in the name. Translations into any language of the words corporation, incorporated, or limited, may not be used as the last word of the corporate name.

Sometimes a corporate name includes the complete English version and a translation with an oblique stroke between the two names. This is permissible providing the last word is one of the words previously mentioned. It is not possible, however, under Ontario law for those names to be used interchangeably. The two names with the oblique stroke is the full legal designation for the corporation and must appear on all documents and the corporate seal as such. If it is desired to use the names interchangeably, it is necessary to provide a special provision in the articles. This special provision permits the corporation to use the translation of the whole name, including the appropriate translation of corporation, incorporated or limited, independent of the name stated in article one.

FOR MINISTRY USE ONLY

ONTARIO CORPORATION NUMBER

Trans Code A	Line No. 0	Stat 0	Comp Type A	Method Incorp. 3
18	20	28	29	30
Share S	Notice Req'd N	Jurisdiction ONTARIO	33	47
31	32			

ARTICLES OF INCORPORATION

Form 1
The Business
Corporations
Act

1. THE NAME OF THE CORPORATION IS
SUPER WIDGETS LIMITED

2. THE ADDRESS OF THE HEAD OFFICE IS

123 Anywhere Street, Suite 4

(Street & Number or R.R. Number & if Multi-Office Building give Room No.)

London, Ontario

(Name of Municipality or Post Office)

x 1 x 2 x 2

(Postal Code)

City of London

(Name of Municipality, Geographical Township)

in the

County of Middlesex

(County, District, Regional Municipality)

3. THE NUMBER OF DIRECTORS IS **2**

4. THE FIRST DIRECTOR(S) IS/ARE

NAME IN FULL, INCLUDING ALL GIVEN NAMES	RESIDENCE ADDRESS, GIVING STREET & NO. OR R.R. NO. & MUNICIPALITY OR POST OFFICE AND POSTAL CODE
John Edward Doe	123 Anywhere Street, Suite 4 London, Ontario x1x 2x2
Mary Ann Doe	123 Anywhere Street, Suite 4 London, Ontario x1x 2x2

Example

The corporation is permitted to set out its name as follows and may be legally designated by that name:
 (Insert here a direct translation
 of the name, or if this is not possible, an
 idiomatically correct translation of the whole
 corporate name).

If you intent to incorporate with a partner, the shares will most likely be held equally by two different persons. It may then be advisable to include the following clause respecting voluntary dissolution.

Example - The corporation may be dissolved upon the authorization of a majority of the votes cast at a general meeting of the shareholders of the corporation, duly called for the purpose or upon the authorization of at least 50 percent of the votes of all shareholders entitled to vote at such meeting. If the shares of the corporation are to be held equally by two or more partners, it is advisable for each partner to seek the counsel of a lawyer to try and foresee problems that could arise in the future.

PART 9 - FILING OF ARTICLES

9.1 General

Completed articles in duplicate, computer printed Ontario biased or Ontario weighted name search report from the NUANS system, other supporting documents (if required) and the prescribed fee are to be mailed or delivered to:

Companies Services Branch
 Ministry of Consumer and Commercial Relations
 555 Yonge Street
 Toronto, Ontario
 M7A 2H6

Under normal circumstances, articles that are forwarded by mail are processed within 24 hours of receipt by the Branch.

Where there is a need for speedy incorporation, over-the-counter service, processing incorporation in about 30 minutes, is provided. To obtain this service you must visit the Public Office of the Companies Services Branch, 2nd Floor, 555 Yonge Street, Toronto, situated at the corner of Yonge and Wellesley Streets, near the Wellesley Subway Station. For car users there is a municipal parking lot on Wellesley Street, just east of Yonge Street.

9.2 Warning

No business transactions should be entered in the name of the proposed corporation until the certificate of incorporation is received. Certificate of incorporation bears the date on which fully and correctly completed articles of incorporation, and supporting documents, and the prescribed fees are received by the Ministry. Articles which are deficient will be returned to you or to your lawyer; when resubmitted the certificate of incorporation will bear the date on which the corrected articles and supporting documents are received by the Ministry.

PART 10 - ORGANIZATION

10.1 General

Once the corporation is incorporated a number of important items need to be attended to in order to organize the corporation to carry on business. Among these items are the adoption of by-laws, banking and financing arrangements and appointment of auditors.

It may be advisable to retain the services of a lawyer to ensure the corporation is properly organized and to obtain advice on the directors' responsibilities, among other matters. By having the corporation properly organized, you should eliminate a number of potentially serious problems in the future.

10.2 Use of a Name Other Than Corporate Name

A corporation may use a name other than its corporate name. For example, a corporation 12345 Ontario Ltd. may carry on business under the name or style, "Sunray Cleaners" or a corporation, Hometown Developers Inc. may carry on business as "Ace Builders".

However, NO corporation shall carry on business in Ontario or identify itself to the Ontario public by a name or style other than its corporate name unless the name or style is first registered (section 2(1) of The Corporations Information Act, 1976). The appropriate registration form (Form CD-441) may be obtained from:

Registrar of Partnerships
Companies Services Branch
Ministry of Consumer and
Commercial Relations
555 Yonge Street
Toronto, Ontario
M7A 2H6

A corporation which has registered and uses a name or style other than its corporate name is required to set out its corporate name on all contracts, invoices, negotiable instruments and orders for goods and services (section 2(4), The Corporations Information Act, 1976).

APPENDIX "A"

WEAK (i.e. FREQUENTLY OCCURRING) TERMS IN CORPORATE NAMES			
ADVERTISING	DEVELOPMENT	IMPERIAL	OFFSET
AGENCIES	DIESEL	IMPORT	OIL
AGENCY	DISTRIBUTING	IMPORTED	ONTARIO
AIR	DISTRIBUTOR(S)	IMPORTERS	OPERATING
AMERICAN	DISTRICT	IMPORTING	
APPLIANCE(S)	DOMINION	IMPORTS	PACIFIC
ASSOCIATED		INDUSTRIAL	PACKAGING
ASSOCIATES	ELECTRIC	INDUSTRIES	PAINT
AUTO	ELECTRONIC	INSURANCE	PAINTING
AUTOMOBILE(S)	ENGINE	INTERNATIONAL	PAINTS
AUTOMOTIVE	ENGINEERING	INVESTMENTS	PARK
BAY	ENGINEER(S)	INVESTORS	PAUL
BEVERAGES	ENTERPRISE	JEWELLERS	PAVING
BOILER	EQUIPMENT	JOHN	PHARMACY
BROKERAGE	ESTATE	LABORATORIES	PIZZA
BROKERS	EXCAVATING	LAKE	PIZZERIA
BROTHERS	EXCAVATION	LAND	PLASTERING
BUILDERS	EXPLORATION	LANDSCAPE	PLUMBING
BUILDING	EXPORT	LANDSCAPING	PORT
CAFE	EXPRESS	LEAF	POWER
CANADA	FACTORY	LEASE	PRINTING
CANADIAN	FARM(S)	LEASING(S)	PRODUCTION
CAR	FEDERAL	LIFE	PRODUCTS
CARPET	FLORIST	LOGGING	PROPERTIES
CARTAGE	FOOD	LUMBER	RADIO
CENTER(S)	FORMING	MACHINE	REAL
CENTRAL	FUR	MACHINERY	REAL ESTATE
CENTRE(S)	FURNITURE	MANAGEMENT	REALITIES
CITY	GARAGE	MANUFACTURING	REALTY
CLEANERS	GAS	MAPLE	REFRIGERATION
CLEANING	GENERAL	MARINE	RENTALS
COMMUNITY	GEORGE	MARKET	REPAIR
COMPANIES	GOLF	MATERIALS	REPAIRS
COMPANY	GOODS	MEN	RESTAURANTS
CONCRETE	HAIR	METAL	RETAIL
CONSOLIDATED	HARDWARE	MFG	RIVER
CONSTRUCTION	HAULAGE	MINES	ROAD
CONSULTANT(S)	HEATING	MINING	ROYAL
CONSULTING	HOLDINGS	MOTEL	
CONTRACTING	HOME(S)	MOTOR	SALES
CONTRACTOR(S)	HOTEL	MOTOSALES	SCHOOL
CONTROL	HOUSE	MUTUAL	SECURITIES
COUNTY		NATIONAL	SERVICE(S)
CREDIT		NEW	SHOP
		NORTH	SHOPPE
		NORTHERN	SON(S)
		OFFICE	SPORTS
			ST
			STATION
			STEAK
			STEEL

APPENDIX "B"

STEREO
STORAGE
STORE(S)
STUDIO
SUPPLIES
SUPPLY
SYNDICATE
SYSTEM
SYSTEMS

TAVERN
TELEPHONE
TELEVISION
TIRE
TORONTO
TOWING
TRACTOR
TRADING
TRAILERS
TRANSPORT
TRANSPORTATION
TRAVEL
TREE
TRUCK
TRUCKING
TRUCKS
TV

UNION
UNITED
UNLIMITED
USED

VALLEY
VENDING

WEAR
WELDING
WEST
WESTERN
WORKS

SEARCH HOUSES CURRENTLY IN BUSINESS

ABC Name Search & Reservation Ltd.

545 Yonge Street
Toronto, Ontario
M4Y 1L8

Telephone: (416) 968-1053

Canadian Corporation & Name Search Ltd. (CCNS)

66 Gerrard Street East
3rd Floor

Toronto, Ontario
M5B 1G3

Telephone: (416) 868-0530

Comsearch Names Inc.

(1) 6th Floor
55 University Avenue
Toronto, Ontario
M5J 2H7

Telephone: (416) 364-6669

(2) Suite 2224, Tower A
Place de Ville
Ottawa, Ontario
K1R 5A3

Telephone: (613) 236-5151

**National Corporate Name Clearance Corporation
(NCNC)**

663 Yonge Street
5th Floor
Toronto, Ontario
M4Y 2A4

Telephone: (416) 923-4080

Professional Corporate Services Limited

31 Wellesley Street East
Suite 207

Toronto, Ontario M4Y 1G7

Telephone: (416) 961-8921

APPENDIX "C"

OFFICES OF SMALL BUSINESS OPERATIONS DIVISION MINISTRY OF INDUSTRY AND TOURISM

Brockville

143 Parkdale Avenue
Brockville, Ontario
K6V 6B2

Tel: (613) 342-5522

Kingston

4th Floor
Princess Anne Bldg.
797 Princess Street
Kingston, Ontario
K7L 1G1

Tel: (613) 546-0174

Kitchener

305 King Street West
Kitchener, Ontario
N2G 1B9

Tel: (519) 744-6391

London

Suite 607
195 Dufferin Street
London, Ontario
N6A 1K7

Tel: (519) 433-8105

Orillia

2nd Floor
Sterling Trust Bldg.
73 Mississauga Street
P.O. Box 488
Orillia, Ontario
L3V 6K2

Tel: (705) 325-1363

Ottawa

Suite 900
220 Laurier Avenue West
Ottawa, Ontario
K1P 5Z9

Tel: (613) 237-6280

Owen Sound

P.O. Box 485
Suite 104
1131 Second Avenue East
Owen Sound, Ontario
N4K 5P7

Tel: (519) 376-3875

Peterborough

139 George Street North
Peterborough, Ontario
K9J 3G6

Tel: (705) 742-3459

St. Catharines

Box 3024
Prov. Gas Bldg.
4th Floor
St. Catharines, Ontario
L2R 3B5

Tel: (416) 684-2345

Sault Ste. Marie

120 Huron Street
P.O. Box 1196
Sault Ste. Marie, Ontario
P6A 5N7

Tel: (705) 253-1103

Sudbury

767 Barrydowne Road
Sudbury, Ontario
P3A 3T6

Tel: (705) 560-1330

Thunder Bay

435 James Street South
P.O. Box 5000
Thunder Bay, Ontario
P7C 5G6

Tel: (807) 475-1325

Timmins

273 Third Avenue
Timmins, Ontario
P4N 1E2

Tel: (705) 264-5393

Toronto (Metro)

Suite 480
5 Fairview Mall Drive
Willowdale, Ontario
M2J 2Z1

Tel: (416) 491-7680

Toronto (Head Office)

Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E6

Tel: (416) 965-5494

(Mr. W. Shave)

Windsor

Suite 303
875 Ouellette Avenue
Windsor, Ontario
N9A 4J6

Tel: (519) 252-3475

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